IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 9609 of 2007(R)

PETITIONER:

SMT.V.K.P.BRINDA, AGED 38 YEARS,
W/o.K.VINOD MENON,
HIGHER SECONDARY SCHOOL TEACHER,
NAVAMUKUNDA HIGHER SECONDARY SCHOOL,
THIRUNAVAYA, MALAPPURAM DISTRICT.

BY ADV. SRI.P.K.IBRAHIM

RESPONDENTS:
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1. **THE REGIONAL DEPUTY DIRECTOR,**
   HIGHER SECONDARY EDUCATION,
   REGIONAL OFFICE, KOZHIKODE.

2. **K.SASIDHARAN, PRINCIPAL,**
   NAVAMUKUNDA HIGHER SECONDARY SCHOOL,
   THIRUNAVAYA, MALAPPURAM DISTRICT.

BY GOVERNMENT PLEADER SRI.T.T.MAHMOOD
ADV. SRI.KRISHNADAS P. NAIR
SMT.K.L.SREEKALA
SRI.HARIDAS P.NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE GOVERNMENT ORDER G.O.(MS)No.162/98. G.Edn. DATED 13.5.98.

EXT.P2: COPY OF THE PROCEEDINGS OF THE MANAGER DATED 10.9.1999.

EXT.P3: COPY OF THE GOVERNMENT ORDER G.O.(Ms) NO.389/2000/G.Edn.DATED 25.11.2000.

EXT.P4: COPY OF THE ORDER No.ACD.A2/14760/HSE/2001 DATED 1.1.2002 OF THE DIRECTOR, HIGHER EDUCATION.

EXT.P5: COPY OF THE GOVERNMENT ORDER G.O.(Ms) No.290/2006/G.Edn. DATED 2.12.2006.

EXT.P6: COPY OF THE ORDER No.A1/180/2007 DATED 24.2.2007 OF THE 1ST RESPONDENT.

TRUE COPY

P.A TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.9609 of 2007

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Dated this the 30th day of October, 2007

JUDGMENT

The petitioner is a Higher Secondary School Teacher in Navamukunda Higher Secondary School, Thirunavaya, Malappuram District. She is aggrieved by Ext.P6 order by which she has been rendered supernumerary on the second respondent being appointed as Headmaster/Principal of the School. The situation arose on the following factual scenario. By the decision of this Court and the Supreme Court, qualified Headmasters holding the post of Principal was directed to be allowed to continue as Principal of Higher Secondary Schools. The second respondent was the Headmaster who was holding charge of Principal also of the School. This Court held that the post of Principal would be deemed to have arisen immediately on promulgation of the special rules which stipulated that there shall be a Principal in all Higher Secondary Schools. In tune with the said decision, the Government issued an order creating 1225 posts of principals in the 1225 Higher Secondary Schools in the State. In that order the Government stipulated that the

post of Principal would be created by converting one post of Higher Secondary School Teacher so that the total number of Higher Secondary School Teachers would be the same even after appointing the Principal. In order to accommodate Headmasters of High Schools as Principal of the Higher Secondary School also the Government issued Ext.P5 order in which it was stipulated that qualified Headmasters who are promoted as Principal will have to teach 16 periods. When a Headmaster is expected to teach 16 periods naturally the number of periods available for Higher Secondary School Teacher would be reduced. Under the above circumstances, in Ext.P5 the Government held as follows:

i) "for the creation of supernumerary posts of Higher Secondary School Teacher (Jr.) to accommodate the Junior most Higher Secondary School Teacher (Jr.), who will be thrown out due to shortage of teaching periods consequent on a Headmaster turned Principal takes charges and handles 16 hours teaching periods.

ii) Exemption to Principals from teaching in cases where the Higher Secondary Section does not have the subject of the Headmaster turned Principal for teaching."

2. When the second respondent was appointed as Principal of the Higher Secondary School pursuant to Ext.P5 by Ext.P6 order the petitioner was retained in a supernumerary

post created for the purpose of complying with the conditions in Ext.P5. Petitioner is aggrieved by her being termed as supernumerary. The apprehension of the petitioner is that by terming her as supernumerary, she would be deprived of service benefits in future.

3. The contentions of the petitioner are two fold. First is that Ext.P5 only contemplates a supernumerary post of Higher Secondary School Teacher(Junior) alone and not that of Higher Secondary School Teacher. The Petitioner being a Higher Secondary School Teacher, by implementing Ext.P5 the petitioner cannot be termed as supernumerary, since Ext.P5 speaks only about Higher Secondary Teacher (Junior). The second is that as per Ext.P5, qualified Headmasters who are promoted as Principals will have to teach 16 periods. In the present case the second respondent has not taught students even for a single period during his tenure and therefore the petitioner herself was teaching or taking classes for the entire periods allowed to English, which is a subject of both the petitioner as well as the Principal. Therefore the petitioner cannot be termed as supernumerary at all, because she was

occupying the post depending on the number of periods allowed to English which periods she alone was teaching.

4. The contention of the learned Government Pleader is that although Ext.P5 speaks of Higher Secondary School Teacher (Junior) what was contemplated by Ext.P5 is only that the Junior most among the Higher Secondary School Teachers available, whether Higher Secondary School Teacher or Higher Secondary School Teacher(Junior), would be rendered supernumerary. As far as the number of periods are concerned, according to the learned Government Pleader it does not make any difference because as per the Government Order the post of Principal has been created by converting one post and Higher Secondary School Teacher and therefore once the Headmaster is appointed as Principal also there would naturally be a reduction in the post of Higher Secondary School Teacher as a result of which one teacher has to be rendered supernumerary which alone has been done by Exts.P5 and P6.

5. I have considered the rival contentions.

6. According to me although Ext.P5 is intended to save a difficult situation that may arise on Headmasters being promoted

as Principals, it actually creates more problems than it seeks to solve. The first is that the same speaks only about a Higher Secondary School Teacher (Junior) being rendered supernumerary. Second is that when the Full Bench of this Court held that the post of Principal would stand created on promulgation of the special rules, it cannot be held that the post of Principal came in to being only on the Government issuing the Government Order creating 1225 post of Principals. The number of Higher Secondary School Teachers have been fixed and appointed on the basis of the total number of periods available for each subject. Therefore, there are already the stipulated number of Higher Secondary School Teachers in the school. The post of Principal is in addition to that, since the post of Principal come into being immediately on coming into force of the special rules. Therefore, normally there need not be any conversion of post of Higher Secondary School Teacher into that of Principal. But the Government insists that the post of Principal came into being only when the Government order creating the posts came into force, which specifically stipulated that the post of Principal would be created by converting one

post of Higher Secondary School Teacher to accommodate the Principal. These are all some of the problems thrown up by Ext.P5 order.

7. However, I do not think that it is necessary to decide that issue now. Admittedly, the second respondent has retired from service as a result of which the petitioner ceased to be supernumerary, going by Exts.P5 and P6 themselves. The petitioner has no case that she has been deprived of any monetary benefits on account of her being termed as supernumerary. The petitioner's apprehension is that in future she may be deprived of service benefits for the period during which she was termed as numerary. If it is declared that the petitioner would not be deprived of any service benefits, whatsoever, because of her being termed as supernumerary for the period when the second respondent was holding the post of Principal, the petitioner's fears can be allayed. Accordingly, in view of the fact that the Government has not denied the specific averments of the petitioner that the second respondent has not taught even a single period as principal and the petitioner was in fact taking classes for the entire periods available for English,

I declare that simply because of the fact that the petitioner has been termed as supernumerary during the period when the second respondent held the post of Principal to satisfy the conditions in Ext.P5 she would not be deprived of any service benefits whatsoever presently or in future.

The writ petition is disposed of as above.

S.SIRI JAGAN, JUDGE

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